

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BALAPUWADUGE MENDIS, MICHAEL
FEOLA, ANDREA ARBAUGH, and EDWARD
ASH, on their own behalf and on the behalf of all
others similarly situated,

Plaintiffs,

vs.

SCHNEIDER NATIONAL CARRIERS, INC., a
Nevada corporation,

Defendant.

NO. 2:15-cv-00144-JCC

**DECLARATION OF ERIKA L.
NUSSER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Erika L. Nusser, declare as follows:

1. I am a member of Terrell Marshall Law Group PLLC and co-lead counsel for Plaintiffs Balapuwaduge Mendis, Michael Feola, Andrea Arbaugh, and Edward Ash in this matter. I am a member in good standing of the bar of the State of Washington. I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.
2. Class Counsel thoroughly analyzed the factual and legal issues involved in this case. Class Counsel propounded written discovery and reviewed thousands of documents. Class Counsel deposed Defendant's designated agents and learned essential information about

1 Defendant's policies and practices. After obtaining Defendant's available payroll and hours
2 data, Counsel worked with an expert to analyze that data and calculate damages.

3 3. On January 19, 2016, before extensive discovery, the parties participated in their
4 first mediation. The parties were unsuccessful in their efforts to resolve the case and
5 recommenced litigation.

6 4. After class certification, the parties continued to engage in extensive discovery,
7 including assessing potential damages and conducting depositions of the parties' respective
8 damages experts. The parties also filed cross motions for summary judgment, and Schneider
9 once again sought to challenge certification by filing a motion to decertify the class. *See* Dkt.
10 Nos. 144, 146 and 153.

11 5. On April 17, 2018, the parties engaged in another mediation with the Honorable
12 Paris Kallas (Ret.). The parties were unable to reach a settlement that day, but Judge Kallas
13 indicated she would make a mediator's proposal to the parties within a week. Because the
14 parties did not reach a settlement at mediation, however, the parties continued to litigate and
15 prepare for trial. *See, e.g.*, Dkt. Nos. 155, 159, 162, 164, 168, 173 and 175.

16 6. On April 20, 2018, Judge Kallas made a mediator's proposal. During the next
17 three weeks, the parties further negotiated the terms of the mediator's proposal and entered into
18 a memorandum of understanding on May 14, 2018. The parties continued to negotiate the terms
19 of settlement and executed the final Stipulation for Settlement and Release of Class Action
20 Claims on July 8, 2018. Attached hereto as Exhibit 1 is a true and correct copy of the
21 Stipulation for Settlement and Release of Class Action Claims, including Exhibit A thereto.

22 7. All of the parties' settlement negotiations have been non-collusive and at arm's
23 length. The parties have reached a class action Settlement in this case that Plaintiffs and their
24 counsel believe is fair, adequate, reasonable, and in the best interests of the Class.

25 8. If approved by the Court, Plaintiff Mendis will receive a service award of
26 \$15,000, and Plaintiffs Feola, Arbaugh, and Ash will each receive an award of \$10,000 from
27

1 the Settlement Fund. Plaintiffs will also ask the Court to approve payment from the Settlement
 2 Fund to Class Counsel to reimburse them for out-of-pocket litigation costs and to compensate
 3 them for their reasonable attorneys' fees. If approved, Class Counsel will be reimbursed for
 4 \$1,437,500 in attorneys' fees and up to \$120,000 in costs. Plaintiffs will also ask the Court to
 5 approve the payment of fees, costs, and other charges imposed by the Settlement Administrator
 6 from the Gross Settlement Fund in an amount not to exceed \$25,000. Finally, Plaintiffs
 7 estimate that approximately \$103,171 will be deducted from the Gross Settlement Fund to pay
 8 for employer-side taxes.

9 9. Plaintiff Mendis and Feola responded to Defendant's discovery requests, and all
 10 Plaintiffs had their depositions taken, remained in contact with Class counsel throughout the
 11 litigation, worked with us in regard to the settlement negotiations, and committed themselves to
 12 all the rigors of litigation in the event this case did not settle. They have also agreed to "general
 13 release" of all claims and damages against Defendant, whereas Settlement Class Members are
 14 only releasing the claims and allegations brought in this lawsuit, as more fully described in the
 15 Settlement Agreement.

16 10. After exhaustively analyzing the strengths and weaknesses of the Class claims,
 17 and then analyzing the various damage calculations by the parties' experts accordingly, Class
 18 Counsel apportioned the Net Settlement Fund among the claims remaining at the time of
 19 settlement. The specific breakdown is as follows: (1) 34 percent of the Net Settlement Fund
 20 will be allocated based on the Settlement Class Members' pro rata rest break hours worked
 21 during the Settlement Class Period; (2) 7 percent of the Net Settlement Fund will be allocated
 22 based on the Settlement Class Members' pro rata per diem pay received during the Settlement
 23 Class Period; and (3) 59 percent of the Net Settlement Fund will be allocated based on the
 24 Settlement Class Members' pro rata overtime hours worked during the Settlement Class Period.

25 11. Assuming the Court approves the requested service awards, attorneys' fees and
 26 costs, and Settlement Administration costs, Class Counsel estimate that Settlement Class
 27

Members will each receive a payment equal to approximately (1) 71 percent of their actual damages for the rest break claim; (2) 36 percent of their actual damages for the per diem claim (to the extent the Class Member is part of the per diem subclass); and (3) 35 to 210 percent of their actual damages for the overtime claim (to the extent the Class Member is part of the overtime subclass). The average payment per Settlement Class Member is currently projected to be an average of approximately \$3,350.

12. TMLG is a law firm in Seattle, Washington that focuses on complex civil and commercial litigation with an emphasis on consumer protection, product defect, employment, wage and hour, real estate, personal injury, and civil rights matters. The attorneys of TMLG have extensive experience in class actions, collective actions, and other complex matters. They have been appointed lead or co-lead class counsel in numerous cases at both the state and federal level. They have prosecuted a variety of multi-million-dollar consumer fraud, wage and hour, securities fraud, and product defect class actions. The defendants in these cases have included companies such as Wal-Mart, Microsoft, Best Buy, Toyota, Honda, Sallie Mae, Comcast, ABM Industries, AT&T, T-Mobile USA, Weyerhaeuser, Behr Products, American Cemwood, Bank of America, Discover, Chase, Capital One, and HSBC.

13. I am the lead attorney from TMLG in this case. I concentrate my practice in complex litigation, including the prosecution of consumer, wage and hour, and civil rights class actions. I have been actively involved in every aspect of dozens of class actions brought on behalf of consumers, employees, and others, and have recovered millions of dollars and obtained substantial injunctive relief for the represented groups.

14. I received a double B.A., with distinction, from the University of Washington in 2005. In 2008, I received my J.D. from the University of San Francisco School of Law, graduating in the top 25%.

15. I have tried and won cases in state and federal courts and have also successfully briefed and argued cases before the Ninth Circuit Court of Appeals and the Washington State

1 Court of Appeals. In *Ramirez v. Precision Drywall, Inc.* (King County Superior Court), for
 2 example, I was appointed co-lead counsel for a certified class of 325 Washington employees.
 3 After a five-week jury trial, we obtained a judgment of \$4.1 million. That judgment was
 4 affirmed by the Washington Court of Appeals.

5 16. I have been repeatedly named to the annual Rising Star list (2013 – 2018) by
 6 Washington Law & Politics Magazine.

7 17. Toby Marshall is a founding member of TMLG, and the firm's current
 8 managing member. Mr. Marshall received a B.A., cum laude, from California State University,
 9 Sacramento in 1996. In 2002, he received his J.D. from the University of Washington School of
 10 Law, where he served on the Moot Court Honor Board and was selected to the Order of
 11 Barristers. Mr. Marshall concentrates his practice in complex civil litigation, including the
 12 prosecution of wage and hour, consumer protection, and civil rights class actions. He has been
 13 actively involved in every aspect of dozens of class actions brought on behalf of employees,
 14 consumers, and others and have recovered millions of dollars and obtained substantial
 15 injunctive relief for the represented groups.

16 18. Examples of employment class or collective actions that TMLG is litigating or
 17 has litigated to a successful completion include:

- 18 • *Helde v. Knight Transportation, Inc.*—TMLG represented a class of
 19 current and former truck drivers alleging violations of wage and hour
 20 laws in Washington. After several years of vigorous litigation, TMLG
 21 reached a class-wide settlement of \$1.45 million, not including
 attorneys' fees and costs. Final Approval was granted by the U.S.
 District Court for the Western District of Washington in October 2017.
- 22 • *Berry v. Transdev Services, Inc. and First Transit, Inc.*—TMLG
 23 represents a proposed class of more than 600 drivers who operate the
 24 paratransit bus service for King County Accessible Service Division.
 25 Filed in 2015, the Plaintiffs allege violations of Washington wage and
 26 hour laws. The case is currently pending in the U.S. District Court for the
 27 Western District of Washington.

- 1 • *Rhode v. T-Mobile U.S.A., Inc.*—Filed in 2015, TMLG represents a
2 proposed class of nearly 2,000 sales associates in Washington State who
3 allege wage and hour violations regarding unpaid commissions. The case
4 is currently pending in King County Superior Court.
- 5 • *McCracken v. Pacific Cargo Services, LLC, et al.*—TMLG represented a
6 certified class of truck drivers in Washington and Oregon who alleged
7 wage and hour violations. After years of complex litigation in
8 Washington and Oregon Courts, TMLG reached a settlement of
9 \$475,000 on behalf of the class. King County Superior Court granted
10 final approval of the settlement in August 2017.
- 11 • *Witschel v. IMCO General Construction, Inc.*—Filed in 2013 in
12 Washington State Superior Court in and for Skagit County. TMLG
13 represented current and former hourly-paid employees who alleged
14 violations of Washington wage and hour law regarding rest breaks. The
15 case settled on a class-wide basis for \$1.1 million. Final approval of the
16 settlement was granted on June 16, 2016.
- 17 • *Tolliver, et al. v. Avvo, Inc.*—TMLG represented a class of current and
18 former sales employees who alleged they were misclassified as overtime
19 exempt. The case settled on a class-wide basis for \$1.75 million, and
20 final approval was granted in September 2017.
- 21 • *Spencer v. FedEx Ground Package System, Inc.*—TMLG represented a
22 certified class of current and former delivery drivers who allege
23 violations of state wage and hour laws. The case settled on a class-wide
24 basis for \$10,500,000, and final approval was granted in December 2016.
- 25 • *Romatka, et al. v. Brinker International Payroll Company, L.P., et al.*—
26 Filed in 2013 on behalf of approximately 900 current and former hourly
27 employees who alleged wage and hour violations regarding failure to
provide rest breaks and failure to properly disclose service charges.
TMLG obtained a \$900,000 settlement on behalf of the Class. The
settlement received final approval on March 6, 2015.
- *Newell v. Home Care of Washington, Inc., et al.*—TMLG represented a
class of more than 400 in-home health care workers who alleged
violations of state wage and hour law. The class was certified on
December 20, 2012 by the Honorable Linda Tompkins, in Washington
State Superior Court, in and for Spokane County. This case settled in
2014 and received final settlement approval in early 2015.

- 1 • *Paz v. Sakuma Brothers Farms, Inc.*—TMLG represents a class of

2 almost 1,000 migrant and seasonal berry pickers who alleged violations

3 of state wage and hour law and the federal Agricultural Worker

4 Protection Act. The primary claims in the case settled for \$850,000 plus

5 an agreement on injunctive relief in May 2014; preliminary approval of

6 the settlement was granted by the Honorable Marsha J. Pechman in the

7 United States District Court for the Western District of Washington in

8 July 2014, and final approval was granted in November 2014. TMLG

9 successfully litigated additional claims not covered by the 2014

10 settlement, which resulted in a unanimous opinion by the Washington

11 Supreme Court in *Lopez Demetrio v. Sakuma Brothers Farms, Inc.*, 183

12 Wn.2d 649 (2015). Following the Washington Supreme Court decision,

13 the court approved a final settlement of all claims and ordered payment

14 of Plaintiffs' attorneys' fees and costs in July 2016.
- 15 • *Ramirez, et al. v. Precision Drywall, Inc.*—TMLG represented a certified

16 class of workers who alleged they were not paid for overtime work. The

17 case was tried before a jury during a five-week period in 2010, and

18 TMLG successfully obtained a judgment for the workers in excess of

19 \$4,000,000. TMLG continues to work on enforcing the judgment against

20 multiple defendants. An initial distribution of funds collected so far was

21 made to eligible class members in April 2016.

12 19. Examples of consumer protection class actions that TMLG is litigating or has

13 litigated to a successful completion include:

- 14 • *Gold, et al. v. Lumber Liquidators, Inc.*—Filed in 2014 on behalf of

15 consumers who purchased defective flooring. TMLG represents a

16 nationwide class of consumers as well as seven sub-classes of consumers

17 in the states of California, New York, Illinois, West Virginia, Minnesota,

18 Pennsylvania, and Florida. The case is pending in the United States

19 District Court for the Northern District of California.
- 20 • *Jordan v. Nationstar Mortgage, LLC*—TMLG represents a class of

21 homeowners who were improperly locked out of their homes by their

22 mortgage lender. The lawsuit is pending in the U.S. District Court for the

23 Eastern District of Washington. The Court granted summary judgment

24 on liability to the certified class in November 2017.

- 1 • *Breazeale, et al v. Victim Services, Inc., et al*—TMLG currently
2 represents a proposed class of consumers who allege violations of the
3 FDCPA. The lawsuit is pending in U.S. District Court for the Northern
4 District of California. The Ninth Circuit affirmed the District Court's
5 denial of a motion to compel arbitration and denial of a motion to strike
6 in December 2017.
- 7 • *Cavnar, et al. v. BounceBack, Inc.*—Filed in 2014 on behalf of
8 Washington consumers who received false, misleading, and deceptive
9 debt collection letters printed on the letter head of county prosecuting
10 attorneys. TMLG worked to negotiate a class-wide settlement, and final
11 approval was granted in September 2016.
- 12 • *Baltzell v. Indiana Family and Social Services Administration, et al.*—
13 Served as co-counsel for a class of intellectually or developmentally
14 disabled persons whom were deemed ineligible for, denied services
15 from, or terminated from Medicaid waiver programs due to screening
16 conducted with improper protocols and instruments. The case settled,
17 and final approval was granted in 2016.
- 18 • *Soto v. American Honda Motor Corporation*—Filed in 2012 on behalf of
19 owners and lessees of 2008-2010 Honda Accords that consume motor oil
20 at a much higher rate than intended, due to a systemic design defect. The
21 case settled on a class-wide basis and final approval was granted in
22 March 2014.
- 23 • *Smith v. Legal Helpers Debt Resolution LLC*—Filed in 2011 on behalf of
24 consumers who were charged excessive fees for debt adjusting services
25 in violation of Washington law. Class settlements were approved by the
26 Court in December 2012 and December 2013.
- 27 • *Brown v. Consumer Law Associates LLC, et al.*—Filed in 2011 on behalf
of consumers who were charged excessive fees for debt adjusting
services in violation of Washington law. A class settlement was
approved by the Court in 2013.
- *Bronzich, et al. v. Persels & Associates, LLC, et al.*—Filed in 2010 on
behalf of consumers who were charged excessive fees for debt adjusting
services in violation of Washington law. A class settlement was
approved by the Court in 2013.
- *Milligan, et al. v. Toyota Motor Sales, Inc.*—Filed in 2009 on behalf of
owners of 2001-2003 Toyota RAV4s containing defective Electronic
Computer Modules, which cause harsh shifting conditions and
permanent damage to the transmissions. TMLG worked to negotiate a

1 nationwide class action settlement, and final approval was granted in
2 January 2012.

- 3 • *Kitec Consolidated Cases*—Served as co-counsel in a national class
4 action lawsuit against the manufacturers of defective hydronic heating
5 and plumbing systems. The case settled for \$125,000,000, and final
6 approval was granted in 2011.
- 7 • *Seraphin v. AT&T Internet Services, Inc., et al.*—A multi-state class
8 action filed in 2009 on behalf of AT&T internet customers who paid \$20
9 a month or less for internet service and were assessed an Early
10 Termination Fee when they cancelled service. A class settlement was
11 approved by the Court in 2011.

12 20. Examples of civil rights class actions TMLG is litigating or has litigated to a
13 successful completion include:

- 14 • *Wilbur v. Mount Vernon, et al.*—TMLG was appointed co-lead class
15 counsel for a certified class of indigent defendants in Mount Vernon and
16 Burlington, Washington who were not being provided meaningful access
17 to a public defender. After three years of litigation and a nine-day bench
18 trial, TMLG prevailed and obtained substantial injunctive relief on
19 behalf of the class.
- 20 • *Fuentes, et al. v. Benton County*—In 2015 TMLG filed a class action on
21 behalf of indigent defendants in Benton County who were being jailed
22 because they could not afford to pay their legal financial obligations,
23 such as court fines, fees, penalties, or costs. The case settled in 2016,
24 obtaining substantial injunctive relief on behalf of the class.
- 25 • *Brown et al. v. Lexington County, et al.*—In 2017 TMLG filed suit
26 against Lexington County, South Carolina on behalf of a class of
27 indigent defendants who were being jailed because they could not afford
to pay their legal financial obligations. This case is ongoing.

I declare under penalty of perjury of the laws of the State of Washington and the United
States of America that the foregoing is true and correct, and that this declaration was executed
in Seattle, Washington, this 12th day of July, 2018.

By: /s/ Erika L. Nusser, WSBA #40854
Erika L. Nusser, WSBA #40854

CERTIFICATE OF SERVICE

I, Erika L. Nusser, hereby certify that on July 12, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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1 DATED this 12th day of July, 2018.

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